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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

FIKES *et al.*

Appl. No. 09/583,200

Filed: May 30, 2000

For: **HLA Class I A2 Tumor
Associated Antigen Peptides and
Vaccine Compositions**

Confirmation No. 1443

Art Unit: 1644

Examiner: Schwadron, R.B.

Atty. Docket: 2060.0150002/EKS/HCC

Provisional Election Of Species

Commissioner for Patents
Washington, D.C. 20231

Sir:

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In reply to the Office Action dated **September 11, 2002**, Applicants hereby provisionally elect (a) the peptide **RLLQETELV (SEQ ID NO:22)**, and (b) a peptide peptide/composition containing a **CTL epitope**. Newly added claims 37, 41, 52-54, 57-73, 154, and 158-160 read on the provisionally elected subject matter, with claims 37 and 68 being generic. This election is made without prejudice to or disclaimer of the other claims or subject matter disclosed.

Applicants assert the right to claim additional species in the event that a generic claim thereto is found to be allowable in accordance with 37 C.F.R. § 1.141(a). This election is made **with traverse**.

Applicants respectfully point out that the Office Action did not address MPEP section 803.04, directed to nucleotide sequences. Pursuant to the notice *Examination of Patent Applications Containing Nucleotide Sequences*, 1192 O.G. 68 (November 19, 1996), MPEP section 803.04 holds that even when nucleotide sequences encoding different proteins

are contained in an application, a reasonable number, normally ten, sequences will be examined in a single application. Applicants submit that the instant amino acid sequences constitute different fragments of four proteins, rather than numerous different proteins altogether as contemplated by section 803.04. "[N]ucleotide sequences encoding the same protein are not considered to be independent and distinct inventions and will continue to be examined together." MPEP § 803.04. Thus, Applicants respectfully submit that the present requirement for restriction is improper. However, even if the Examiner contends that the instant epitopes constitute different proteins within the scope of section 803.04, Applicants submit that a reasonable number of such epitopes should be examined together, and the Office Action has given no indication why the search of 13 epitopes from only four proteins is unreasonable in the present case. Thus, Applicants request examination of a reasonable number of epitopes, notwithstanding the fact that they are recited in several independent claims.

Accordingly, Applicants respectfully request that the Restriction Requirement be withdrawn so the subject matter of the pending claims can be examined together. Consideration and allowance of all pending claims, are respectfully requested.

Applicants have organized the independent claims to include peptides having the same priority dates to aid in examination. Thus, although the Amendment submitted herewith contains several independent claims, Applicants respectfully request examination of a reasonable number of peptides, notwithstanding the fact that they are recited in four independent claims (claims 37, 74, 108, and 128).

It is believed that extensions of time are not required, beyond those that may otherwise be provided for in accompanying documents. However, in the event that

additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



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Date: 11/12/2002

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